**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL REVISION APPLICATION No. 75 of 1998**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**DAHYABHAI BHANABHAI PATEL - Applicant(s)**
**Versus**
**STATE OF GUJARAT - Respondent(s)**

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**Appearance :**

MR BHARAT K DAVE for Applicant(s) : 1,MR PREMAL R JOSHI for Applicant(s) : 1,
MS MEETA PANCHAL APP for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

**Date : 24/07/2007**

**ORAL JUDGMENT :**

1. Learned advocate for the applicant seeks permission to produce on record a copy of School Leaving Certificate of the applicant issued by

Udach Vaniya Falia Primary School, Gandevi indicating the birth date of the applicant. Permission as prayed for is granted. Said copy of the School Leaving Certificate is ordered to be taken on record.

2. The applicant – accused has preferred this Revision Application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Cr.P.C.”) and challenged the judgment and order passed by learned Sessions Judge, Valsad at Navsari in Criminal Appeal No. 46 of 1994 confirming the judgment and order passed by learned J.M.F.C., Gandevi on 29-10-1994 in Criminal Case No. 980 of 1989 convicting and sentencing the applicant for the offence punisbable u/s 325 of the I.P. Code.

3. On the basis of complaint filed by Chhotubhai Koyabhai before Bilimora Police Stanton offence was registered against the applicant – accused. On completion of investigation charge sheet was laid before the learned J.M.F.C., Gandevi for the offence punishable u/s 325 of the I.P. Code. Learned J.M.F.C.,Gandevi framed charge at Exh. 3 against the applicant to which the applicant pleaded not guilty and claimed to be tried. Therefore, the

prosecution adduced evidence to prove the charge. At the end of trial, learned J.M.F.C., Gandevi found that the prosecution proved the charge beyond reasonable doubt and convicted the applicant for the offence punishable u/s 325 of the I.P. Code and sentenced him to undergo rigorous imprisonment for two years and to pay fine of Rs.500/- i/d to undergo further rigorous imprisonment for three months.

4. Being aggrieved by the order of conviction rendered by leaned J.M.F.C., Gandevi, the applicant preferred Criminal Appeal No. 46 of 1994 before the Sessions Court, Valsad at Navsari. The learned Sessions Judge, Valsad at Navsari rejected the criminal appeal and confirmed the judgment and order of conviction rendered by the learned J.M.F.C., Gandevi in Criminal Case No.980 of 1989. Therefore, the applicant – convict approached this Court by way of filing present Revision Application u/s 397 read with Section 401 of the Cr. P.C.

5. I have heard learned advocate Mr. Bharat K. Dave for the applicant and learned A.P.P. Ms. Meeta Panchal at length and in great detail and also perused record and proceedings of the case.

6. Learned advocate Mr. Dave for the applicant

while making oral submissions did not challenge conviction and has restricted his arguments to the quantum of sentence imposed by the trial court and confirmed by the appellate Court by submitting that the applicant – convict is aged about 71 years and is suffering from several diseases. Therefore, it is expedient to release him on probation of good conduct and should be given benefit under the provisions of Probation of Offenders Act, 1958. He has relied on the decisions of (i) Thakor Viraji Jesangji reported in 2007 (1) G.L.H. 169, (ii) Daljit Singh and Others V. State of Punjab Through Secretary Home Affairs, reported in JT 2006 (7) SC 98 and (iii) Rajesh Anantram Thakur V. The State of Nagarasgtra, reported in 1993 Cr. L.J. 208.

7. Learned A.P.P. Ms. Panchal for the respondent – State has strongly objected to the benefit being extended to the applicant under the Probation of Offenders Act, 1958 and submitted that manner in which the offence was committed, the benefit under the Probation of Offenders Act, 1958 cannot be extended to the applicant. She also submitted that the learned Magistrate was justified in sentencing the applicant which is confirmed by the Appellate Court and therefore no interference is warranted in this Revision application and hence the same is required to be

dismissed.

8. In view of the fact that the learned advocate for the applicant has not challenged conviction, this Court is not required to go into merits of the case. Therefore, the only question required to be considered is whether the provisions of the Probation of Offenders Act can be made applicable to the present case !

9. It appears from the copy of School Leaving Certificate that birth date of the applicant is 5-12-1936. Therefore, the applicant – convict is aged about 71 years. There is nothing on record to indicate that the applicant had criminal antecedents or that he was involved in such activities after 22-2-1989. It also appears from the judgment of trial court that a request was made to give benefit under the provisions of the Probation of Offender's Act but the Court did not give benefit to the applicant – convict. However considering the age of the applicant and also considering the fact that the applicant had no criminal antecedents, in my view, the trial court was not justified in extending the benefit under the provisions of the Probation of Offender's Act to the applicant. Section 4 of the Probation of Offenders Act, provides that when any person is

found guilty of having committed offence not punishable with death or imprisonment of life and the Court by which the person is found guilty is of the opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offenders, it is expedient to release him on probation of good conduct, the Court may, instead of sentencing him at-once direct that he should be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep peace and be of good behaviour.

10. In the decision of Thakor Viraji Jesangji V. (The) State of Gujarat, reported in 2007 (1) G.L.H. 169, this Court after taking into consideration the age of the appellant and also taking into consideration that the appellant did not have any criminal back ground released him on probation of good conduct by exercising power keeping in mind the provisions of Sections 3 and 4 of the Probation of Offenders Act.

11. In the decision of Rajesh Atmaram Thakur V. The State of Maharashtra, reported in 1993 Cri.

L.J. 208, Court suspended the sentence and released the accused on probation of good conduct u/s 360 of the Cr. P.C. for the offence punishable u/s 304 Part-II and 325 of the I.P. Code.

12. In view of above, it becomes clear that when accused is found guilty of having committed the offence not punishable with death or imprisonment of life, the Court has power to release him on probation of good conduct. In the present case, considering the nature of offence, the circumstances in which the offence was committed, age of the applicant and also considering the fact that the applicant had no criminal antecedents and is not involved in any criminal activity after the incident, benefit under the provisions of the Probation of Offender's Act is required to be extended to the applicant.

13. In view of above, this revision application is partly allowed and the judgment and order of conviction passed by learned J.M.F.C., Gandevi in Criminal Case No. 980 of 1989 and confirmed passed by the learned Addl. Sessions Judge, Valsad at Navsari in Criminal Appeal No. 46 of 1994 is confirmed. However, the sentence of imprisonment is suspended and the applicant is

directed to be released on probation of good conduct on his entering into personal bond in the sum of Rs.5,000/ (Rupees Five Thousand only) with one surety of the like amount for a period of one year to appear and receive sentence when called upon during the period of one year. Rule is made absolute to the aforesaid extend.

(Bankim N. Mehta,J.)

/JVSatwara/